

1 L. Kruger

2 AFTERNOON SESSION

3 (Time noted: 1:30 p.m.)

4

5 L E W I S K R U G E R,

6 resumed and testified as follows:

7 CONTINUED EXAMINATION

8 BY MR. SHORE:

9 Q. Let's focus on the claims that are  
10 being allowed at RFC -- sorry, ResCap, LLC.

11 What's the reason why the claim is  
12 fixed if the plan is confirmed but left  
13 unliquidated if the plan is not confirmed?

14 MR. KERR: Again, Chris, as you know,  
15 there's a question about whether or not  
16 plan confirmation issues need to be  
17 addressed as part of the plan confirmation  
18 process.

19 I recognize that there's stuff in the  
20 FGIC Settlement Agreement, so -- and I --  
21 this is not a place to be talking about  
22 broader plan confirmation issues. So I  
23 will object if I think we're getting there.

24 A. Want to start the question again.

25 Q. Sure.

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2 What's the reason why the FGIC claim  
3 at ResCap, LLC is fixed if the plan is  
4 confirmed but left unliquidated if the plan is  
5 not?

6 MR. KERR: And, again, are you  
7 talking -- you're referring to the FGIC  
8 Settlement Agreement, because if you're  
9 talking more than that, then I don't think  
10 it's appropriate.

11 BY MR. SHORE:

12 Q. Can you answer the question?

13 A. Are you asking -- if I can respond by  
14 this way. Are you talking about the  
15 \$337 billion allocation?

16 Q. Yes.

17 A. I think it is in the context of the  
18 plan. But having said that, I think the reason  
19 that there is a claim there is that FGIC did  
20 have, indeed, claims against ResCap, as well as  
21 against Ally, and it seemed to be appropriate  
22 that it should be there and it's part of the  
23 global summary and part of the allocation  
24 process that we went through as part of the  
25 mediation.

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2 Q. All right. So let me break that into  
3 two pieces.

4 First of all, why was it left  
5 unliquidated in the event that the plan was not  
6 confirmed?

7 MR. WYNNE: I'm going to object to  
8 the extent that that would require him to  
9 disclose what was discussed in the  
10 mediation.

11 MR. KERR: Let me state it this way.  
12 All right.

13 MR. SHORE: Please.

14 MR. KERR: To the extent you can  
15 answer the question without revealing  
16 discussions that happened in mediation --  
17 let me read the question again.

18 To the extent you can answer the  
19 question without disclosing anything that  
20 occurred in the mediation, that's fine.

21 Again, Chris --

22 A. It was part of the --

23 MR. KERR: Chris, if you're asking  
24 about the FGIC Settlement Agreement and  
25 you're referring us to why is it this way

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2 in the FGIC Settlement Agreement, I think  
3 that's a fair question.

4 So -- but if you're going to be  
5 talking more broadly about what was the  
6 discussion at the mediation, I'm going to  
7 direct him not to answer. If you're going  
8 to be talking about what is in the plan  
9 confirmation, that is not what we're here  
10 for, as well.

11 A. It was part of the negotiation of the  
12 settlement agreement in the mediation.

13 Q. And what were the reasons that the  
14 debtors were willing to proceed or ResCap, LLC  
15 was willing to proceed with the settlement  
16 agreement in which it didn't fix its claim, the  
17 claim asserted by FGIC against it?

18 MR. KERR: Again, on that question,  
19 I'm going to direct him not to answer due  
20 to the confidentiality provision.

21 BY MR. SHORE:

22 Q. So you're not going to testify at all  
23 as to why the claim is left unliquidated at  
24 ResCap, LLC in the event that the plan doesn't  
25 close?

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2 MR. KERR: Chris, you can ask him --  
3 you can show him the settlement agreement,  
4 ask him what's your understanding of why  
5 this is. And if you can answer that  
6 question without revealing discussions in  
7 the mediation, you can answer that.

8 MR. SHORE: Well, look, I've been  
9 avoiding making speeches, unlike some  
10 others at the table. I don't agree that  
11 you can come in and take the position that  
12 the agreement was negotiated at arm's  
13 length, but then say you're not entitled to  
14 ask any questions with respect to what I  
15 meant by arm's lengths, and we'll get to  
16 those questions.

17 You guys can take whatever positions  
18 you want, but you can't take a sword and a  
19 shield. I'm here on the FGIC Settlement  
20 Agreement.

21 BY MR. SHORE:

22 Q. If you turn to Article III, am I  
23 correct that Article or Section 3.01 describes  
24 the two scenarios in which -- in which the  
25 claims that FGIC has asserted at ResCap, LLC

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2 Does that 337 reflect just a view of  
3 management, you -- as advised by the lawyers  
4 that that's the liability for a alter ego  
5 theory; in other words, one way to look at this  
6 is that if you looked at the allowance of 337  
7 versus a total maximum liability of 596, that  
8 represents more than a 50 percent likelihood  
9 that if you litigated it to conclusion, that  
10 ResCap, LLC would be held liable for the debts  
11 of GMACM and RFC?

12 MR. KERR: Objection.

13 A. Is there a question in there?

14 Q. Yes.

15 First of all, is that the proper way  
16 of looking at it?

17 A. I think the way I looked at the, if  
18 that's the question that you're asking, with  
19 respect to the plan being confirmed, then it  
20 seems to be that the way to think about it is  
21 in the context of the global settlement and the  
22 mediation process.

23 And we came to a conclusion and I  
24 came to a conclusion myself that it was not an  
25 appropriate for there to be a FGIC claim at

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2 ResCap, because they had alleged theories why  
3 they should have claims at the ResCap level and  
4 theories why they should have claims against  
5 Ally.

6 So it seemed to be not inappropriate  
7 for them to have a claim against ResCap in the  
8 context of a confirmed plan, although I really  
9 think in part it's a planned confirmation  
10 issue; but, nonetheless, that's why it came  
11 out.

12 Q. But what do you mean by it would be  
13 not -- was it not inappropriate to give them a  
14 claim on account of they had claims against  
15 Ally.

16 I don't understand what that means.

17 A. Well, there is an Ally settlement as  
18 part of the global claim settlement, global  
19 claim agreement. And I think and my thought  
20 was that in light of that and in view of the  
21 fact that, in my mind, the prospect of  
22 litigating with FGIC over the proof of claims  
23 on alter ego theories would be a unfortunate  
24 outcome because we would spend years in  
25 litigation with uncertain results, and that the

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2 global plan agreement was a far better outcome.

3 And part of that global plan

4 agreement was an acknowledgment that they're

5 entitled to a claim against ResCap.

6 Q. So let me ask it this way.

7 Do you believe that \$337 million

8 claim at ResCap outside the context of the

9 global settlement would be an appropriate claim

10 amount?

11 MR. KERR: Objection.

12 A. I haven't considered that, no.

13 Q. Okay.

14 What was the reason you didn't just

15 agree to fix the liability at 337 under all

16 circumstances?

17 MR. KERR: Objection. Again, if you

18 can -- again, I don't want you to disclose

19 anything that was discussed in the

20 mediation, you can answer that question

21 without disclosing what was discussed in

22 the mediation.

23 A. It was part of the mediation in the

24 global settlement agreement. It's hard for me

25 to separate out.

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2 Q. You said before that it was  
3 compensating for their claims against Ally.

4 What did you mean about that?

5 A. Well, they alleged that they had  
6 claims against Ally.

7 Q. So?

8 A. Domination control of ResCap, Ally is  
9 paying \$2.1 billion to settle these claims.  
10 They are looking for releases from FGIC, as  
11 well. It's not inappropriate for part of the  
12 proceeds of their contribution to be used to  
13 satisfy the FGIC claims.

14 Q. Okay.

15 Well, did GMACM contribute more  
16 claims or give more claims to FGIC in the event  
17 of the settlement?

18 Its claim is fixed; right?

19 A. When you say it's fixed, I'm not sure  
20 I'm following that.

21 Q. Okay.

22 The claim against GMACM that you're  
23 allowing FGIC is the same claim whether the  
24 plan is confirmed or not; right?

25 A. It's 596.

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2 Q. Right.

3 Well, 596 is combined for both GMACM  
4 and RFC; right?

5 A. Correct.

6 Q. Okay.

7 Well, let's just ask it that way.

8 And it's 596, whether or not the plan is  
9 confirmed; right?

10 MR. KERR: Objection.

11 MR. WYNNE: Objection.

12 A. I don't think I can answer that  
13 outside of the context of the mediation.

14 Q. So what is it? You're here as the  
15 business person. What is the claim that FGIC  
16 has against GMACM in the event that the plan is  
17 confirmed or is not confirmed?

18 A. That was just set forth in the  
19 settlement agreement.

20 Q. Okay.

21 What is it? What is your business  
22 understanding?

23 A. My business understanding is that  
24 those claims, if the plan is not confirmed,  
25 right, is that those allocations are, in part,

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2 based upon the governing agreements under the  
3 trusts and FGIC and the debt.

4 Q. Okay.

5 And if it isn't confirmed -- or,  
6 sorry, if it is confirmed?

7 A. Then if it is confirmed, then FGIC  
8 does get a claim against ResCap.

9 Q. Okay.

10 But why -- when you say "ResCap," you  
11 mean ResCap, LLC?

12 A. LLC.

13 Q. Okay.

14 But why would ResCap, LLC be the one  
15 giving the claim in the event that there is a  
16 confirmation?

17 MR. KERR: Objection.

18 A. Again, Chris, that's part of the  
19 global settlement that was agreed to during the  
20 course of the mediation.

21 Q. Okay.

22 Let me just ask it this way. Is what  
23 you're saying is that this is the way in which  
24 FGIC gets a direct or gets a piece of the Ally  
25 settlement by resolving the claim -- resolving

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2 estate or the estates.

3 Q. Well, you wouldn't be allowing claims  
4 that you thought were illegitimate claims just  
5 to foster a settlement, would you?

6 MR. KERR: Objection.

7 A. What do you mean? I'm not sure what  
8 you mean.

9 Q. Well you wouldn't, for example, if  
10 FGIC said I'm only going to settle if you give  
11 me a secured claim at ResCap, LLC, that  
12 wouldn't have been something in your  
13 consideration; right?

14 A. I would consider whatever a party  
15 suggests was appropriate for them to be part of  
16 the process of choosing a global settlement  
17 agreement.

18 Q. Okay.

19 So why is the global settlement so  
20 important here?

21 A. I think it's very important, because  
22 it does seemed to me that the alternative to  
23 the global settlement is no Ally contribution  
24 of \$2.1 billion, which I believe is a lot of  
25 money; secondly, that the outcome of no Ally